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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 RANDY SIMMS, an Individual,

10 Plaintiff,

11 vs.

12 NEVADA RESTAURANT SERVICES,  
13 INC., a Nevada corporation; DOES I - X;  
ROE CORPORATIONS I - X,

14 Defendant.  
15

CASE NO.: 2:24-cv-1182-MDC

(PROPOSED) STIPULATED  
DISCOVERY PLAN AND SCHEDULING  
ORDER

SPECIAL SCHEDULING REVIEW  
REQUESTED

16  
17 The parties, Plaintiff RANDY SIMMS (“Plaintiff”), and Defendant NEVADA  
18 RESTAURANT SERVICES, INC. (“Defendant”), by and through their respective attorneys of  
19 record, hereby submit this Stipulated Discovery Plan and Scheduling Order pursuant to Federal  
20 Rule of Civil Procedure 26(f) and Local Rule 26-1(b).

21 **1. Fed. R. Civ. P. 26(a) Initial Disclosures:**

22 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule of Court 26-1(a), the  
23 parties agree that they will exchange their Initial Disclosures on or before **September 30, 2024**.

24 **2. Discovery Cut-Off Date:**

25 The parties request a discovery period that exceeds 180 days from August 8, 2024, the  
26 date of Defendant’s Motion to Dismiss Plaintiff’s First Cause of Action (ECF 8). An ENE is  
27 currently scheduled for November 13, 2024 (ECF 10).

28 While the parties have conducted limited settlement discussions to date, they believe

1 that the neutral evaluator's assistance at the ENE will greatly increase the likelihood of  
 2 settlement. As such, the parties do not intend to engage in significant discovery prior to the  
 3 ENE in an effort to conserve resources.

4 However, the parties will need more time than 180 days from the date of Defendant's  
 5 appearance to finish discovery if the matter does not resolve at the ENE. Should the matter not  
 6 resolve at the ENE, the parties would have approximately two and a half months to complete  
 7 discovery,<sup>1</sup> including written discovery and conducting depositions, including Defendant's  
 8 FRCP 30(b)(6) deposition(s), the Plaintiff's deposition, as well as other percipient witness  
 9 depositions. Moreover, under a strict 180-day period, the parties would be required to exchange  
 10 initial expert witness disclosures a little over three weeks after the ENE is scheduled to take  
 11 place.<sup>2</sup> As such, the current discovery schedule is not feasible.

12 For these three reasons, the parties respectfully submit that good cause exists to allow  
 13 the parties to complete discovery within 180 days from the November 13, 2024, ENE, or **May**  
 14 **12, 2025**.

### 15 **3. Amending the Pleadings and Adding Parties:**

16 The date for filing motions to amend the pleadings or to add parties shall not be later  
 17 than 90 days prior to the discovery cut-off date and, thus, not later than **February 11, 2025**.

### 18 **4. Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):**

19 In accordance with Rule 26(a)(2), initial disclosures identifying experts shall be made  
 20 75 days prior to the discovery cut-off date, and therefore, not later than **February 26, 2025**,  
 21 which is more than the standard 60 days prescribed by LR 26-1(b)(3). Disclosures identifying  
 22 rebuttal experts shall be made 45 days after the initial disclosure of experts and, therefore, not  
 23 later than **April 14, 2025**, which is more than 30 days after the initial disclosure of experts.<sup>3</sup>

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25 <sup>1</sup> 180 days from Defendant's Answer would be February 4, 2025.

26 <sup>2</sup> Applying a February 4, 2025, discovery cut-off date, initial expert disclosures would be due  
 27 on December 6, 2024.

28 <sup>3</sup> 30 days after the due date for initial expert disclosures is Saturday, April 12, 2025, and as  
 such, the deadline was moved to the following business day.

1           **5. Dispositive Motions:**

2           The parties shall file dispositive motions not more than 30 days after the discovery cut-  
3 off date and, therefore, not later than **June 11, 2025**.

4           **6. Pretrial Order:**

5           If no dispositive motions are filed, and unless otherwise ordered by this Court, the Joint  
6 Pretrial Order shall be filed not more than 30 days after the date set for filing dispositive motions  
7 and, therefore, not later than **July 11, 2025**. If dispositive motions are filed, the deadline for  
8 filing the Joint Pretrial Order will be suspended until 30 days after decision on the dispositive  
9 motions or further court order.

10          **7. Fed. R. Civ. P. 26(a)(3) Disclosures:**

11          If no dispositive motions are filed, and unless otherwise ordered by this Court, the  
12 parties shall include the disclosures required by Federal Rule of Civil Procedure 26(a)(3) and  
13 any objections thereto in the Joint Pretrial Order.

14          **8. Alternative Dispute Resolution:**

15          The parties certify they have met and conferred about the possibility of using alternative  
16 dispute-resolution processes including mediation, arbitration and ENE. As noted above, an  
17 ENE is scheduled for November 13, 2024.

18          **9. Alternative Forms of Case Disposition:**

19          The parties certify they have considered consent to trial by a magistrate judge under  
20 28 U.S.C. 636(c) and Federal Rule of Civil Procedure Rule 73 and the use of the Short Trial  
21 Program (General Order 2013-01).

22          **10. Electronic Evidence:**

23          The parties recognize that electronically stored information may be involved in this  
24 matter and prefer to deal with such information on an ad hoc basis as issues may arise. The  
25 parties verify they have discussed whether they intend to present evidence in electronic format  
26 to jurors for the purpose of jury deliberations. Discussions between the parties will be ongoing  
27 as the trial date approaches and they stipulate that they intend to present any electronic evidence  
28 in a format compatible with the Court's electronic jury evidence display system.

1           **11. Changes to be made in the timing, form, or requirement for disclosures under Rule**  
2           **26(a):**

3           None at this time.

4           **12. The subjects on which discovery may be needed, when discovery should be completed,**  
5           **and whether discovery should be conducted in phases or be limited to or focused on**  
6           **particular issues:**

7           As this case currently involves claims of unlawful discrimination and retaliation under  
8 the Americans with Disabilities Act (“ADA”) and Nevada law, the parties anticipate discovery  
9 will focus on such issues, including, but not limited to, the employment of the Plaintiff,  
10 Defendant’s employment policies and procedures in place during the time period the Plaintiff  
11 was employed, topics relevant to Plaintiff’s employment, Plaintiff’s alleged disability,  
12 accommodation requests, Plaintiff’s economic and noneconomic damages, and Defendant’s  
13 defenses. The parties do not believe discovery should be conducted in phases and/or limited to  
14 particular issues.

15           **13. Any issues about disclosure, discovery, or preservation of electronically stored**  
16           **information, including the form or forms in which it should be produced:**

17           The parties agree that to the extent that information relevant to the claims and defenses  
18 in this action is stored electronically, such electronic information will be preserved and should  
19 be produced in the form in which it is maintained.

20           **14. Any issues about claims of privilege or of protection as trial-preparation materials,**  
21           **including—if the parties agree on a procedure to assert these claims after production—**  
22           **whether to ask the court to include their agreement in an order under Federal Rule of**  
23           **Evidence 502:**

24           Currently, the parties do not anticipate any issues arising concerning privilege or  
25 protection and agree to confer further in the event on an ad hoc basis should such issues arise.

26           **15. What changes should be made in the limitations on discovery imposed under these rules**  
27           **or by local rule, and what other limitations should be imposed:**

28           The parties do not currently believe any changes should be made to the limitations on

1 discovery imposed by the Federal Rules of Civil Procedure or the Local Rules of this Court at  
2 this time.

3 **16. Extensions or Modifications of Discovery Plan and Scheduling Order:**

4 Applications to extend any date set by the discovery plan, scheduling order, or other  
5 order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of  
6 good cause for the extension. In accordance with LR 26-3, all motions or stipulations to extend  
7 a deadline set forth in a discovery plan shall be received by the Court no later than 21 days  
8 before the expiration of the subject deadline. A request made after the expiration of the subject  
9 deadline shall not be granted unless the movant demonstrates that the failure to act was the  
10 result of excusable neglect. Any motion or stipulation to extend a deadline or to reopen  
11 discovery shall include:

- 12 (a) A statement specifying the discovery completed;  
13 (b) A specific description of the discovery that remains to be completed;  
14 (c) The reasons why the deadline was not satisfied or the remaining discovery  
15 was not completed within the time limits set by the discovery plan; and  
16 (d) A proposed schedule for completing all remaining discovery.

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It is not good cause for a later request to extend discovery that the parties informally postponed discovery. No stipulations are effective until approved by the Court, and “[a]ny stipulation that would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, may be made only with approval of the Court.” See LR 7-1(b).

Dated this 20th day of September 2024.

**HKM EMPLOYMENT ATTORNEYS, LLP JACKSON LEWIS P.C.**

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**ORDER**

**IT IS SO ORDERED:**

Denied with leave to refile. The parties’ grounds for extended discovery period are generally present in every matter that is assigned to an ENE. The parties’ request, however, appears to be based on the initial disclosure deadline falling too close to the ENE but the parties do not state whether expert witnesses are likely. The parties may refile the stipulation and provide additional information regarding experts.

UNITED STATES MAGISTRATE JUDGE  
CASE NO. 2:24-cv-1182 MDC

DATED: 09-30-24